REMARKS

The Office Action of March 26, 2007, has been carefully reviewed, and in view of the above amendments and the following remarks, reconsideration and allowance of the pending claims are respectfully requested.

In the above Office Action, claims 1, 4, and 12-14 were rejected under 35 U.S.C. § 112, first paragraph. Claims 1, 3-6 and 11 -14 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Bayer* (U.S. Published Application No. 2004/0204725), hereinafter *Bayer*. Claims 5-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bayer* in view of *Haber et al.* (U.S. Patent No. 5,282,806).

The Examiner contends that the new grounds of rejection were necessitated by applicant's amendment filed on January 8, 2007 and that the official action was thus properly made final. Applicant respectfully disagrees. The amendment submitted on January 8 2007 did not amend any of the claims and thus could not have necessitated the new grounds of rejection. Accordingly, applicant respectfully contends that the finality of the official action of March 26, 2007 should be withdrawn and that the claim amendments set forth above should be entered.

In rejecting claims 1 and 12-14 under Section 112, first paragraph, the Examiner contends that the specification only supports extending the manipulator fork from the cone portion, not through the cone portion as recited in the claims. In order to clarify this matter, the claims have been amended to recite both the fork arm and the fork itself. Hence, the fork arm is extendable through the cone portion, which in turn allows use of the manipulator fork without relocation of the cone portion, as in the cited prior art.

The Examiner also has rejected claims 1 and 4 under Section 112, first paragraph, alleging that the specification does not support a recess in the distal exterior surface of the cone for receiving a surgical device. Applicant respectfully traverses this rejection. The drawings and specification clearly illustrate that the recess is in the exterior surface of the cone portion in order to maintain the conical profile of the cone portion during primary dissection. Nevertheless, the specification has been amended to specifically state that it is the exterior surface of the cone portion which has the conical profile and the recesses therein. Accordingly, Applicant submits that this rejection has been obviated.

With respect to the double patenting rejection of claims 1, 3, 12 and 13, Applicant submits herewith a Terminal Disclaimer and required fee.

As set forth above, claims 1 and 12 recite that the at least one manipulator fork arm is extendable through said cone portion.

In contrast, *Bayer* upon which the Examiner relies, discloses a blunt tip 100 which must be extended and/or rotated relative to the endoscopic barrel in order to permit ligating instrument 132 to access the vessel 210. Thus, it clearly is not possible for the ligating instrument 132 or the rod to which it is attached to extend through the blunt tip 100, as in the claimed invention, because the tip has already been extended away from the barrel.

As a practical matter, the ability to extend the manipulator fork arms through the cone portion rather than having to slide the cone forward, provides an improved work space for the ligation operation. As seen from Figure 8 of Bayer, the space in which the surgeon has to work is very limited, i.e., between the end of the shaft and the cradle section on the interior surface, which makes the surgery more difficult. In

the claimed invention, without extending the cone, the manipulator forks and the ligating device can be fully extended, thus providing an open work space in which to manipulate the blood vessels.

Still further, claim 1 recites that said cone portion includes at least one fork recess in the distal exterior surface for receiving the at least one manipulator fork when in a retracted position. The presence of the recess in the distal exterior surface of said cone portion allows the cone portion to maintain the contoured profile during placement and to then utilize the manipulator fork without having to remove the cone portion.

In contrast, the blunt tip 100 of *Bayer* includes a notched portion 120 which is on the proximal, or interior side of the tip 100. The notched portion 120 is dimensioned to facilitate cradling, orientation and positioning or grasping of the vessel 210 during ligation. *Bayer* does not disclose any type of recess on the distal exterior surface of the blunt tip 100.

The remaining claims depend upon either claim 1 or claim 12 and are thus patentable over the cited prior art for at least the reasons set forth above. The undersigned counsel for Applicant kindly requests an interview with the Examiner to resolve any remaining issues in this application and will telephone the Examiner to arrange the same.

CONCLUSION

In view of the above amendments and remarks, Applicants respectfully submit that the claims of the present application are now in condition for allowance, and an early indication of the same is earnestly solicited.

Respectfully submitted,

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